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Dias, Liyanagamage Ranganath Prabashwara

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JAMIE ROMEO

MONROE COUNTY CLERK

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

In the Matter of the Application of

LIYANAGAMAGE RANGANATH PRABASHWARA DIAS,

Petitioner,

-against-

UNIVERSITY OF ROCHESTER,

Respondent.

for a Judgment pursuant to Article 78
of the Civil Practice Law and Rules

AFFIRMATION OF STEPHEN DEWHURST, PH.D.

Index No. E2024003035

STEPHEN DEWHURST, Ph.D., affirms, pursuant to N.Y. C.P.L.R. 2106, that the following is true and correct:

1. I am Vice President for Research ("VPR") and Research Integrity Officer ("RIO") of the University of Rochester (the "University"), as well as Vice Dean of Research and a Professor in the Department of Microbiology and Immunology of the University's School of Medicine & Dentistry ("URSMD"). A true and accurate copy of my *curriculum vitae* is attached hereto as **Exhibit A**.

2. I make this affirmation as VPR and RIO, in which capacity I coordinated the investigation into Petitioner Liyanagamage Ranganath Prabashwara Dias ("Dr. Dias")'s alleged research misconduct (the "Investigation").

I. My Background

3. In 1984, I earned by B.S. in Cellular Pathology from Bristol University, Bristol, England. Then, in 1987, I earned my Ph.D. in Microbiology from the University of Nebraska Medical Center, Omaha, Nebraska.

4. After earning my Ph.D., I had postdoctoral fellowships from 1987-1988 and 1988-1990 in the Department of Medicine and Pediatrics, Columbia University, New York, New York, and the Department of Cancer Biology, Harvard School of Public Health, Boston, Massachusetts, respectively.

5. After completing these fellowships, I joined the University, where I have worked for over three decades. I began as an Assistant Professor in 1990, became an Associate Professor in 1995, and became an Associate Professor with unlimited tenure in 1998.

6. As VPR, I lead the University's vast research program, which spans disciplines including clinical applications and basic sciences, optics, humanities, social sciences, and more. I facilitate and support partnerships among the University's many research offices to make thoughtful and strategic investments in centers, labs, institutes, and initiatives. I also lead efforts to secure sponsored research funding.

7. As VPR, I oversee the Office of the Vice President for Research, the Office of Research Projects Administration, the Laboratory for Laser Energetics, UR Ventures, the Office of Human Subjects Protection/Research Subjects Review Board, and the Health Sciences Center for Computational Innovation.

8. As Vice Dean of Research of URSMD, I advise on strategic planning, core facilities, and funding priorities. I also have taken a lead role in evaluating graduate-level offerings and curriculum and recommending new courses to ensure University students get the best education possible and are trained for a broad range of careers.

9. As Professor of Microbiology & Immunology, I am also proud to have received numerous mentoring and teaching awards, including the University's highest award for graduate education, the William H. Riker University Award for Graduate Teaching.

10. My research focuses on RNA viruses – notably, HIV, influenza, and SARS-CoV-2, and I co-direct the University's HIV/AIDS Clinical Trials Unit, which conducts HIV vaccine and treatment trials and engages with communities affected by HIV.

11. In addition to my administrative and teaching roles with the University, I co-direct the Rochester Partnership for Research and Academic Career Training of Deaf Postdoctoral Scholars.

II. The University's Policy on Research Misconduct

12. A true and accurate copy of the University's Policy on Research Misconduct (the "Policy") is attached hereto as **Exhibit B**, and is available to the public at the following web address: https://www.rochester.edu/orpa/_assets/pdf/compl_miscon3.pdf

13. While the University's Faculty Handbook also contains a Policy on Research Misconduct, the University maintains a separate Policy attached hereto as Exhibit B, which applies University-wide (*i.e.,* to students and faculty).

14. The Policy "outlines the steps to be taken in response to an allegation of misconduct in scholarship and research," and explicitly states that the "procedures outlined may be adjusted as needed to accommodate special circumstances." *See* Ex. B at 1.

15. In addition, the Policy requires that "[r]easonable efforts shall be made to ensure an impartial and unbiased investigation to the maximum extent possible[.]" *See* Ex. B at 1.

16. The Policy is broken down into four steps: (1) Allegations; (2) Inquiry; (3) Investigation; and (4) Adjudication and Further Action.

III. Dr. Dias's Research and Publications[1]

17. Dr. Dias currently is an Assistant Professor in the Departments of Mechanical Engineering and Physics and Astronomy, the former of which is part of the University's Edmund A. Hajim School of Engineering and Applied Sciences (the "Hajim School"), and the latter of which is part of the University's Arts, Sciences & Engineering School ("ASE").

18. As an Assistant Professor, Dr. Dias is not yet eligible for tenure. An Assistant Professor is employed at the University for a term of one or more years, which term(s) may be renewed by the University. In order to be eligible for tenure, a faculty member must have been awarded the higher rank of either Associate Professor or full Professor.

19. On October 14, 2020, the scientific journal *Nature* published an article on which Dr. Dias was the senior and corresponding author, entitled "Room-temperature superconductivity in a carbonaceous sulfur hydride" (the "*Nature* 2020 Article"), which was retracted on September 26, 2022. A true and accurate copy of the *Nature* 2020 Article Retraction Note is attached hereto as **Exhibit C**, and is available to the public at the following web address: https://www.nature.com/articles/s41586-022-05294-9.

20. On June 30, 2021, the scientific journal *Physical Review Letters* ("*PRL*") published an article on which Dr. Dias was the senior and co-corresponding author, entitled "Colossal density-driven resistance response in the negative charge transfer insulator MnS_2" (the "*PRL* 2021 Article"), which was retracted on August 15, 2023. A true and accurate copy of the *PRL* 2021

[1] In scientific literature, authors are listed in order of research role. The senior author (principal investigator who supervised/guided the research) is listed last. The other authors are listed in decreasing order relative to research contribution (the more work an author performed, the earlier they are listed). Manuscript-related correspondence is directed to the corresponding author, usually overlapping with senior author.

Article Retraction Note is attached hereto as **Exhibit D**, and is available to the public at the following web address: https://journals.aps.org/prl/abstract/10.1103/PhysRevLett.131.079902.

21. Three of the *PRL* 2021 Article co-authors were University students who worked in Dr. Dias's lab: Dylan Durkee, Nathan Dasenbrock-Gammon, and Elliot Snider. The other authors were not (and are not currently) affiliated with the University.

22. On July 7, 2022, the scientific journal *Chemical Communications* ("*CC*") published an article on which Dr. Dias was a senior author, entitled "Carbon content drives high temperature superconductivity in a carbonaceous sulfur hydride below 100 GPa" (the "*CC* 2022 Article"), which was retracted on January 15, 2024. A true and accurate copy of the *CC* 2022 Article is attached hereto as **Exhibit E**, and is available to the public at the following web address: https://pubs.rsc.org/en/content/articlelanding/2024/cc/d3cc90410e.

23. One of the *CC* 2022 Article co-authors was a University student who worked in Dr. Dias's lab: Elliot Snider. The other authors were not (and are not currently) affiliated with the University.

24. On March 8, 2023, *Nature* published an article on which Dr. Dias was the senior and corresponding author, entitled "Evidence of near-ambient superconductivity in a N-doped lutetium hydride" (the "*Nature* 2023 Article"), which was retracted on November 7, 2023. A true and accurate copy of the *Nature* 2023 Article Retraction Note is attached hereto as **Exhibit F**, and is available to the public at the following web address: https://www.nature.com/articles/s41586-023-06774-2/.

25. Seven of the *Nature* 2023 Article co-authors were University students who worked in Dr. Dias's lab: Nathan Dasenbrock-Gammon, Elliot Snider, Raymond McBride, Hiranya Pasan, Dylan Durkee, Nugzari Khalvashi-Sutter, and Sasanka Munasinghe. Sachith E. Dissanayake also

worked in Dr. Dias's lab at the University at the time of publication. The other authors were not (and are not currently) affiliated with the University.

26. Thus, both University-affiliated individuals *and* other scientists agreed the *Nature* 2023 Article should be retracted, not just former students of Dr. Dias.

IV. Allegations of Dr. Dias's Research Misconduct

27. Over the course of Fall 2021 and into the Fall of 2022, the University received a series of allegations from other scientists directed at the validity and integrity of the *Nature* 2020 Article.

28. In response, the University initiated an inquiry in accordance with the Policy. An inquiry is distinct from an investigation: it is a preliminary fact-finding to determine if an investigation is warranted. An inquiry is less involved and less in-depth than an investigation.

29. The University ultimately conducted three inquiries (Inquiry 1, Inquiry 2, and Inquiry 2A) in response to the external allegations the University had received.

30. The University utilized a combination of its own faculty and external reviewers to conduct these three inquiries, who reviewed data as provided by Dr. Dias. All three of the Inquiries (1, 2 and 2A) were closed without finding that a full investigation was warranted. However, Inquiry 2 resulted in a recommendation that Dr. Dias submit an erratum to correct ambiguities in the *Nature* 2020 Article based on the reviewers' conclusion that the manuscript, as published, verged on misleading.[2]

[2] To the best of my knowledge, Dr. Dias did not actually submit an erratum to *Nature*, as suggested by the inquiry reviewers.

31. On February 15, 2022, *Nature* announced it had been alerted to concerns about the manner in which the data in the *Nature* 2020 Article had been processed and interpreted. Based on these concerns about the validity of the data, *Nature* commenced its own review of the article.

32. On September 26, 2022, the *Nature* 2020 Article was retracted.

33. The scientific community had raised concerns about the validity and integrity of the data and findings in the *PRL* 2021 Article and the *CC* 2022 Article as well.

34. On March 8, 2023, *Nature* published another article for which Dr. Dias was the senior and corresponding author: the *Nature* 2023 Article.

35. Eight days later, on March 16, 2023, the National Science Foundation ("NSF"), which funded some of Dr. Dias's research at the University, sent my office a letter concerning allegations of research misconduct regarding certain work of Dr. Dias (the "Investigation Referral Letter"). (A copy of the Investigation Referral Letter is attached to the contemporaneously filed Affirmation of David Figlio, Ph.D., (*"Figlio Aff.*") as Exhibit A).

36. When an institution accepts NSF funding (which is federal public funding), it accepts certain responsibilities for the proper use of those federal funds. One of those obligations is to ensure that NSF-funded research is conducted with integrity and is free of research misconduct, defined as the falsification or fabrication of data or plagiarism. NSF may request an institutional funding recipient to accept responsibility for investigating allegations of research misconduct in accordance with applicable federal regulations, policy, and guidance and that institution's own policies (such as the Policy), which investigation findings and conclusions are provided to NSF for review. During an institution's research misconduct proceeding, NSF defers its own proceeding.

V. The Investigation into Dr. Dias's Alleged Research Misconduct

37. Unlike our earlier inquiries into allegations of research misconduct concerning Dr. Dias, which had stopped at the conclusion of the inquiry step of the Policy, the University's receipt and acceptance of the Investigation Referral Letter from NSF required us to immediately begin with the investigation step of the Policy.

38. NSF's letter directed us to investigate allegations that Dr. Dias "fabricated and/or falsified data" in the *Nature* 2020 Article, which had been subsequently retracted by *Nature*. NSF's letter also directed us to investigate allegations that Dr. Dias and had "fabricated and/or falsified data" published in the *PRL* 2021 Article. NSF pointed to specific points of apparent data irregularity to support its decision to mandate an investigation.

A. Convening the Investigation Committee

39. The Policy states that an investigation will be conducted by not less than three members of the faculty. *See* Ex. B at 2. However, the Policy also expressly allows for deviation from its stated procedures ("[t]he procedures outlined may be adjusted as needed to accommodate special circumstances," *see* Ex. B at 1). Thus, while the Policy sets forth guidelines for the procedures to be followed in an investigation, the Policy contemplates that the University may exercise discretion to deviate from the procedures in special circumstances.

40. The University decided to appoint external scientific experts instead of its own faculty members for the NSF-directed investigation. This was done for several reasons. The University had conducted multiple inquiries into Dr. Dias' work, and it would not have been appropriate to reappoint those faculty inquiry reviewers, given their involvement in those earlier actions. We did not believe that we had three non-conflicted faculty members with the necessary scientific credentials who also had not participated in the earlier inquiries. Further, it was vitally important to ensure that this investigation would be credible externally, to answer once and for all

the continuing concerns about the integrity of Dr. Dias' research. It should be recalled that the investigation report would be (and ultimately was) provided to NSF. In short, the University decided that the only way to ensure a thorough, reliable, and credible investigation that would resolve whether Dr. Dias' scientific findings were or were not the result of "fabricated or falsified data" was to seek out non-University-affiliated experts in the field.

41. At this time, I and others at the University held out hope that Dr. Dias would be vindicated. By using non-University-affiliated experts, the investigation would be externally credible to support Dr. Dias if it turned out that he, in fact, had the data to support his published scientific findings. Of course, I and others at the University understood that the investigation also could uncover research misconduct, and, in that case, the investigation also would be credible, which is vital to the University's commitment to scientific truth.

42. Although the Policy provides that the Dean appoints the Investigation Committee, it had been decided that the Investigation Committee would be comprised of external experts. As Vice President for Research at the University, I was well positioned to interface externally and to identify a panel of scientists with the requisite expertise. Therefore, I assumed the lead role at the University for vetting and appointing the Investigation Committee members.

43. To that end, on March 31, 2023, I emailed Peter M. Celliers, Ph.D., Physicist at Lawrence Livermore National Laboratory, to request that he participate in the investigation. Dr. Celliers' research concentrates on applications of x-ray lasers for plasma probing, laser-produced x-ray sources for lithography, and developing optical diagnostic techniques for biomedical applications of lasers. True and accurate copies of my correspondence with Dr. Celliers are attached hereto as **Exhibit G**.

44. Also on March 31, 2023, I emailed Marcus Knudson, Ph.D., Senior Scientist at Sandia National Laboratories, to request that he participate in the investigation. Dr. Knudson's research is in high-energy density physics and material dynamics under extreme pressure and temperature. True and accurate copies of my correspondence Dr. Knudson are attached hereto as **Exhibit H**.

45. On April 13, 2023, I also emailed Marius Millot, Research Scientist at Lawrence Livermore National Laboratory, to request his assistance with the Investigation. Dr. Millot's research is in condensed matter physics, materials science, earth, planetary and exoplanetary science, high-energy density science, and inertial confinement fusion. A true and accurate copy of my correspondence with Dr. Millot is attached hereto as **Exhibit I**.

46. Dr. Celliers, Dr. Knudson, and Dr. Millot are nationally and internationally known physicists. They are qualified to investigate experimental research into the branch of experimental physics in which Dr. Dias was engaged, which involves the properties of physical materials at extreme levels of pressure and temperature.

47. In my correspondence with Dr. Celliers, Dr. Knudson, and Dr. Millot, I asked them whether they had "current or previous personal or professional relationship[s] with Dr. Dias that could be considered a conflict of interest," including with respect to the publications flagged by NSF, and referred them to NSF's conflict of interest form for guidance. *See* Exs. G-I.

48. I also explicitly asked each of them the following:

> Finally, please also let me know if you feel that you cannot conduct this review objectively and without bias (e.g., if you have any affiliation or relationship that might negatively affect your objectivity, or if you have a pre-formed opinion about the matter of scientific misconduct in this instance).
>
> *See* Exs. G-I.

49. All three responded to these requests for information, with nothing that would rise to the level of a conflict of interest or impair their impartiality. *See* Exs. G-I. Therefore, the three of them became the Investigation Committee.

B. The Committee Convenes and Conducts Investigation

50. On May 16, 2023, the Investigation Committee formally convened for its first meeting (and met at least fifty times between May and December 2023). Until the Investigation Committee began its deliberations, I sat in on many of their meetings, including all interviews with witnesses, to ensure compliance with the Policy and to address any of their requests (*e.g.*, a request to search certain of Dr. Dias' laboratory computers for specific data).

51. On May 24, 2023, I emailed Dr. Dias advising him that the Investigation Committee had convened for the first time and requesting he provide information to and schedule interviews with the Committee. *See* Petition (NYSCEF Doc. No. 1) ("*Pet.*") at Ex. J (NYSCEF Doc. No. 15) ("*Pet.* Ex. J").

52. On May 26, 2023, Dr. Dias responded to my email to advise he was assembling information and to provide times for his interview. *See Pet.* Ex. J.

53. Over the course of the next week, Dr. Dias uploaded certain documents for the Investigation Committee to review, which were partially responsive to the Investigation Committee's first written request for materials. *See Pet.* Ex. J. However, despite this initial provisioning of certain requested materials, Dr. Dias consistently failed to provide the Investigation Committee with key raw data (*i.e.*, original source data) that it requested, despite numerous requests for same.

54. On June 9, 2023, Dr. Dias met with the Investigation Committee for the first time. This first interview lasted for about two hours. Dr. Dias did not raise any issue concerning the composition of the Investigation Committee before, during, or after this first interview.

55. On July 7, 2023, Dr. Dias again met with the Investigation Committee, and, again, did not raise any issue concerning its composition during or after this second interview.

56. On July 14, 2023, Dr. Dias met with the Investigation Committee for a third time, and, again, did not raise any issue concerning its composition during or after this third interview.

57. Dr. Dias publishes his research in English, and Dr. Dias also did not raise any concern, during any interview, that he required an interpreter to assist him with the English language. Dr. Dias also did not ask to be accompanied by someone from the University, although I had made clear in writing to him that he was entitled to be accompanied by another member of the faculty or a staff member of the University.

58. The Investigation Committee asked to meet with Dr. Dias again in August 2023. Dr. Dias declined on the ground that he was engaged in a research project that was too important to make time to be interviewed. In October 2023, the Investigation Committee again asked to meet with Dr. Dias. This time, he declined based on the impending birth of his child. The Investigation Committee determined that another meeting with Dr. Dias was not necessary for it to complete its draft report. In response, Dr. Dias complained of the missed opportunity. I offered that, if he did wish to be interviewed again, he should provide me with his available dates. He never did. A true and accurate copy of this correspondence is provided as **Exhibit M**, *infra*.

59. In the course of its investigation, the Investigation Committee interviewed nine persons (some multiple times), including current and former students and collaborators of Dr. Dias.

60. During the Investigation, NSF communicated with the University to ensure that the University's Investigation Committee was aware of all areas of NSF's concern and information within NSF's knowledge. For instance, several months after sending the NSF Referral Letter, NSF

provided to the University evidence of plagiarism in [Petitioner's] NSF career award proposal submission. The Investigation Committee incorporated this information into its review.

61. While Dr. Dias did not fully respond to the Investigation Committee's information requests, even if only to confirm that he did not possess the requested information, Dr. Dias' co-authors appeared before the Investigation Committee for interview and assisted the Investigation Committee in identifying and gathering laboratory data and information relevant to the investigation.

C. Student Witnesses

62. The Investigation Committee interviewed several former and current students who worked in Dr. Dias' laboratory. Specifically, the Investigation Committee sought to speak to the former and current students who were listed as co-authors of the published articles under investigation.

63. The Investigation Committee interviewed certain then-current students (who also were co-authors) in mid-July 2023.

64. It is my understanding that in this Article 78 proceeding Dr. Dias alleges that two students who were not interviewed should have been interviewed: Mr. Nugzari Khalvashi-Sutter and Mr. Sasanka Munasinghe. These two students were the most junior, most inexperienced students in Dr. Dias' lab: one was not a co-author of any of research articles under investigation and the other was only a middle author on one article. The Investigation Committee requested interviews based on co-authors' level of involvement in those articles of interest and the particular experiments and data at the center of the controversy. The Investigation Committee determined the persons necessary to interview based on a co-author's level of involvement, as indicated by how each co-author was presented in those papers (*e.g.*, a first author vs. a middle author), and

based on what the Investigation Committee learned from others concerning each co-author's role in the at-issue experiments.

65. It is my understanding that in this Article 78 proceeding Dr. Dias asserts that the removal of current students from Dr. Dias' lab caused them to believe that he had committed wrongdoing and that this influenced the information they provided to the Investigation Committee. I sat through their interviews with the Investigation Committee. I can think of no reason to support Dr. Dias' concern. First, the students were interviewed in July 2023. It is my understanding that Dean of the Hajim School Wendi Heinzelman's relocation of Dr. Dias' students, about which Dr. Dias complains, occurred several weeks later, on or about August 3, 2023. Second, the current students provided information consistent with other interviewees that Dr. Dias' research practices had ensured a lack of transparency into the raw data to support the findings he published. This was a theme the Investigation Committee heard not only from the current and former students but from non-University-affiliated collaborators on the Articles. The simplest way to conceive of this is that each person relied on Dr. Dias' representations that someone else had performed the research to support a particular data point and therefore believed that the data existed at the time they agreed to be listed as co-authors (which raw data Dr. Dias never produced in the Investigation).

66. It is my understanding that Dr. Dias eventually filed a grievance pursuant to the General Grievance Procedure over the circumstances in which current students were relocated from his laboratory to other faculty laboratories during the investigation (the "Grievance"). This was not an issue raised in the Investigation or with the Investigation Committee as it does not pertain to the Investigation, which focused only on allegations of research misconduct.

D. The *Nature* 2023 Retraction

67. In the meantime, many of the University students and University employee, Research Assistant Dr. Sachith Dissanayake, who were named co-authors on the *Nature* 2023

Article, were growing concerned about the mounting criticism of the Article, as well as about the veracity of the data they relied on for the Article.

68. For these individuals, the idea of reaching out to a scientific publication to retract an Article they co-authored, but no longer had faith in, was a novel (and uncomfortable) experience.

69. Accordingly, when these co-authors approached the University, the University opted to assist those individuals with a retraction letter, at their request. The University did not approach these individuals in advance.

70. In addition to the fact that most these individuals were the University's current and former students (and the University provides assistance to its students in any number of situations), the University has a duty to correct the scientific record. Therefore, when these individuals expressed a concern that the record needed to be corrected, the University assisted them.

71. Dr. Dias became aware that several of his co-authors – and former students/colleagues – intended to send a letter of retraction to *Nature*, and on September 7, 2023. Specifically, Dr. Dias somehow received a draft copy of his co-authors' draft letter; how he gained access to this communication remains unknown. Dr. Dias then proceeded to write them a letter demanding they cease and desist from communicating their retraction letter, publicly retract the letter if it had already been sent, and send him a written apology. He also threated suit if they did not comply with his demands. A true and accurate copy of this September 7, 2023 letter is attached hereto as **Exhibit J**.

72. The co-authors were not deterred, and on September 8, 2023, that sub-group of co-authors wrote a letter to *Nature* requesting retraction of the *Nature* 2023 Article. *See* III, *supra*.

E. Dr. Dias Raises Conflict of Interest Concerns

73. The same day as his co-authors' retraction letter, on September 8, 2023, Dr. Dias wrote a letter to NSF setting forth "concerns" with the composition of the Investigation Committee. A true and accurate copy of this September 8, 2023 letter is attached hereto as **Exhibit K**.

74. By this time, it had been approximately three (3) months since he first met with the Investigation Committee. Dr. Dias had met with the Investigation Committee for three (3) separate interviews. The Investigation Committee had spent countless hours in interviews not only with Dr. Dias but the other witnesses – some multiple times – and had been meticulously studying and analyzing research records sequestered by the University and records provided by witnesses. All this time, Dr. Dias had never raised a "concern" with the composition of the Investigation Committee. Yet, the day his co-authors issued their retraction letter, he raised for the first time that the Investigation Committee was improperly comprised. Further, he raised this issue not with the University but rather directly to NSF (merely copying the University). *See* Ex. K.

75. In response to Dr. Dias' letter, I spoke to NSF on behalf of the University about these issues. NSF did not direct the University that it believed that there was any concern with the composition of the Investigation Committee.

76. On October 14, 2023, Dr. Dias wrote a letter to my office concerning his September 8, 2023 letter to NSF, and asking that the University "consider convening an alternative neutral and independent committee, one that is devoid of any professional or personal conflicts of interest." A true and accurate copy of this October 14, 2023 letter is attached hereto as **Exhibit L**.

77. The University reviewed and considered Dr. Dias's stated grounds. As part of this, I had individual conversations with each of the Investigation Committee members to review each of Dr. Dias' specific concerns. I responded to Dr. Dias via email on October 25, 2023 with the following statement:

> It was and is unclear why several months into direct involvement with the investigative process you chose to voice to NSF in September very specific objections to the make-up of the Committee, concerns you had never before communicated to the University. After you met with all three members of the Committee for two hours on June 9, 2023, you wrote in a letter to me on June 16, 2023, that you "welcome the University's comprehensive neutral unbiased independent investigation into all the allegations," that you were "confident that with the information [you had] provided . . . all the allegations will be found to not support a finding of research misconduct as defined by both the University and the NSF" and that you "welcome the opportunity to be fully vindicated." Thereafter, you met with the Committee two additional times—on July 7 and July 14—each time without voicing these very specific concerns. Your objections months later to the members of the Committee were and are not timely. The University was and is concerned that you raised those concerns only after you had learned about the potential retraction of certain manuscripts and of your co-authors' intent to communicate with Nature to voice their concerns about those published data and to seek voluntary retraction of that 2023 paper. The University took careful steps to inquire about potential conflicts on the part of the members of the Committee in advance of their service and is satisfied with the quality and thoroughness of the fact-finding and deliberations carried out by the Committee to date, which has interviewed many individuals and has fairly reviewed underlying research documentation provided by you and others. And despite the untimely nature of your present objections, the concerns outlined in your letters of September 8 and October 14 nevertheless have been reviewed by the University and discussed with each of the Committee members separately, and based on such review and discussion, the University has concluded that the Committee will not be reconstituted.

A true and accurate copy of this October 25, 2023 email is attached hereto as **Exhibit M**.

78. On October 28, 2023, Dr. Dias responded to this October 25, 2023 email via letter correspondence reiterating his position.[3] A true and accurate copy of this October 28, 2023 letter is attached hereto as **Exhibit N**.

[3] Prior to sending this letter, Dr. Dias also engaged in correspondence with my office complaining that the Investigation Committee was not accommodating him due to the birth of a child, by not having him sit for an additional interview. However, the interview had been requested by the Investigation Committee, not Dr. Dias, and upon learning of his family situation, the committee

79. On November 5, 2023, I responded to Dr. Dias's letter via email stating, "[a]s noted in my October 25 email, your latest conflicts-related concerns have been reviewed in depth, despite their untimeliness, and the University has decided that there are no compelling reasons to reconstitute the Committee." A true and accurate copy of this November 5, 2023 email is attached hereto as **Exhibit O**.

80. I prepared a comprehensive statement of my analysis into Dr. Dias' conflict of interest concerns, and the University included this statement in its final submission to NSF, along with the final investigation report. A true and accurate copy of this statement is attached hereto as **Exhibit P**.[4]

81. I understand that Dr. Dias maintains in this proceeding that Dr. Millot, Dr. Celliers, and Dr. Knudson were his professional "rivals". This is baseless. Dr. Millot, Dr. Knudson, and Dr. Celliers are not pursuing discoveries in the area of superconducting materials, which is the primary focus of Dr. Dias' work. Any intersection between their areas of research pursuits and Dr. Dias' is only what one would expect of researchers with the requisite expertise in the narrow field of physics at issue in the investigation.

F. The Investigation Concludes

82. On December 22, 2023, after meeting more than fifty (50) times, conducting many interviews, and examining copious data and research (though, never the key raw data that would have addressed its most salient concerns, and which was requested from Dr. Dias, but never

determined it was not necessary to the Investigation to conduct a fourth interview. *See generally Pet.*, Ex. E (NYSCEF Doc. No. 10).

[4] Exhibit P references attachments totaling nearly 700 pages, none of which are being furnished to the Court as part of the Exhibit, but all of which may be submitted at the Court's request.

provided), the Investigation Committee made available to Dr. Dias its draft investigation report (the "Draft Investigation Report"). *See Pet.* Ex. L (NYSCEF Doc. No. 17).

83. The Investigation Committee also provided Dr. Dias transcripts and video recordings of his interviews. While entitled according to the Policy, Dr. Dias never provided any comments regarding or requested accuracy-related edits to those transcripts.

84. On January 16, 2024, Dr. Dias requested a two-week extension to submit his response to the Draft Investigation Report, originally due on January 22, 2024, and was granted a one-week extension.[5]

85. On January 30, 2024, Dr. Dias sent a response to the Draft Investigation Report (the "Report Response"), dated January 29, 2024, to the University. The Report Response addressed only half of the allegations under review, and did not provide or point to any material raw data that would support the Articles. *Figlio Aff.* Ex. C.

86. The Investigation Committee reviewed Dr. Dias's Report Response in full, and its contents did not alter their conclusions. *See Figlio Aff.* Ex. B, at 117-121.

87. Thus, on February 8, 2024, the Investigation Committee released to the University its final report of its investigation, entitled "Dias Investigation Committee Report, University of Rochester" (the "Final Investigation Report"). After the University completed its review of the report in accordance with the Policy, the University provided a copy of the Final Investigation Report, along with the University's decision, to NSF for review. *Figlio Aff.* Ex. B.

[5] Until the Petition, Dr. Dias has not raised his ability to speak English as a reason for an accommodation with respect to the response, specifically, or the Investigation, generally, and, in fact the following linked, NPR interview belies this argument: https://www.marketplace.org/2023/04/05/could-a-recent-scientific-breakthrough-in-electric-conductivity-transform-tech/.

88. The Final Investigation Report summarizes the Investigation Committee's findings as follows:

> The Investigation Committee has viewed and heard significant evidence, described below in detail, supporting its conclusion that the preponderance of the evidence supports a finding of research misconduct for each of the 15 allegations pertaining to the Papers and one allegation pertaining to the NSF Proposal. **Specifically, the Investigation Committee finds that Respondent engaged in falsification, fabrication, and/or plagiarism of data, images, and text within each of the Papers and the NSF Proposal. The Investigation Committee's determination, as set forth below in regard to each allegation, is that the evidence indicates that there was a significant departure from accepted research practice; that the misconduct was committed with at least recklessness; and that it is more likely than not that research misconduct occurred**. The Investigation Committee wishes to emphasize, particularly for Respondent's benefit, that the Investigation Committee's charge was not to examine whether the scientific theories underlying the allegations are correct, but rather whether these allegations meet the criteria for research misconduct set forth immediately above.
>
> . . .
>
> The Investigation Committee also examined certain additional considerations specifically flagged for its review in the NSF Letter. As discussed in greater detail below, the Investigation Committee finds that: (i) **Respondent's actions are part of a pattern**—starting from his work as a graduate student at Washington State University ("WSU"); (ii) **Respondent's actions have had a significant impact on the research record, former and current University students, other researchers, and other institutions**; and (iii) Respondent was unable to recall having completed any particular training in the ethical conduct of research.
>
> *See Figlio Aff.* Ex. B (emphasis added).

VI. The Investigation Complied with the Research Misconduct Policy

89. The Investigation began within thirty days after the NSF requested the University investigate allegations of Dr. Dias's research misconduct. *Compare* Ex. B at 2 ("Investigation" (1)) *with* ¶ 44, *supra*.

90. The University appointed a fact finding committee, subject to the permitted deviation from the Policy, who were given the specific allegations against Dr. Dias, access to all available evidence, and an ability to interview Dr. Dias and others. *Compare* Ex. B at 2 ("Investigation" (2)), *with Figlio Aff.* Ex. B at 7-11.

91. While the Policy states that, "*[g]enerally*, an investigation should be completed within 120 days after its initiation," based on the complexity of the research, number of witness interviews, and volume of evidence to be reviewed, the University completed the investigation within 220 days, which extension was expressly requested of and permitted by NSF. *See* Ex. B at 2 ("Investigation" (2)) (emphasis added).

92. Further to this point, the size and scope of the investigation was significant, resulting a Final Investigation Report of 124 pages of the Investigation Committee's analysis and rationale for its findings, inclusive of figures and data tables. The Investigation was performed as expeditiously as the circumstances and issues under investigation allowed. Further, Dr. Dias sought and was provided extensions of time during the process, and his overall less-than-fully-cooperative participation added time. For instance, when Dr. Dias failed to fully respond to the Investigation Committee's requests for data, the Investigation Committee attempted to obtain the information through alternative means.

93. Dr. Dias was provided with a written copy of all the allegations and had the opportunity to appear before the Investigation Committee and respond (again, he was interviewed three times). *See* Ex. B at 2 ("Investigation" (3)).

94. Dr. Dias asked whether he could have counsel present for his interviews, but, as provided by the Policy, he was permitted to "utilize the assistance of and be accompanied by a

member of the faculty or staff of the University," and was not permitted to bring legal counsel. *See* Ex B at 2 ("Investigation" (3)).

95. Dr. Dias was provided the Draft Investigation Report, then had thirty days – plus an extension – to provide a response, which was considered in preparing the Final Investigation Report. *Compare* Ex. B at 2-3 ("Investigation" (4)), *with Figlio Aff.* Ex. B at 7-11.

96. Upon conclusion of the Investigation Committee's work, on February 8, 2024, the Investigation Committee released the Final Investigation Report to Dean Heinzelman with all required findings enumerated in over one hundred pages, who in turn, forwarded it to the Provost as the University's deciding official. *Compare* Ex. B at 3 ("Investigation" (5)), *with Figlio Aff.* Ex. B.

VII. Adjudication and Further Action

97. Pursuant to the Policy, after the Investigation step, there is an Adjudication and Further Action step. *See* Ex. B at 3.

98. On February 14, 2024, Dean Heinzelman sent Dr. Dias a letter stating the Provost had "accepted the findings and conclusions with respect to research misconduct as set forth in the Investigation Committee's final report – specifically, the Investigation Committee's findings of research misconduct as to Allegations A1-5, B1-2, C, D1-7, and E," that the University is "considering certain corrective actions," and "will inform NSF and other relevant funding agencies." *See Pet.* Ex. P (NYSCEF Doc. No. 21).

99. On February 21, 2024, Dr. Dias provided a supplemental response to the Investigation Committee's draft report (*Figlio Aff.* Ex. E), about which the University advised NSF on February 23, 2024. A true and correct copy of my correspondence transmitting this response to NSF is attached hereto as **Exhibit Q**.

100. On February 26, 2024, Provost Figlio wrote a letter to Dr. Dias informing him that he was referring his case to the UCTP "for potential removal prior to the end of the period for which you are appointed and termination of your employment by the Board of Trustees for academic cause," and that the "grounds for this referral are the findings by the . . . Investigation Committee in its final report which determined that your conduct constituted serious research misconduct, including fabrication of data." *Figlio Aff.* Ex. F.

101. Pursuant to this correspondence, and in accordance with the Policy, the procedures applicable to removal prior to the end of the period for which Dr. Dias and termination based on the Investigation are laid out in the Handbook in Section IV.D.

102. It is my understanding that, as of the time of the signing of this Affirmation, neither the UCTP nor the Board of Trustees have rendered a determination and the procedures are ongoing.

VIII. Conclusion

103. It is my understanding that Dr. Dias alleges that the University denied him a fair opportunity to defend himself and took actions to "bias" the process to ensure that he would be found guilty of the research misconduct allegations against him. This allegation fails to appreciate the consequence to the University of the findings.

104. Dr. Dias' research was funded by NSF. NSF's grant terms provide that it may seek reimbursement from the University for the value of the misused research funding. Indeed, a recent article in *Nature* notes that "Dias's prestigious NSF grant — which has US$333,283 left to pay out until 2026 — could also be in jeopardy if the NSF finds reason to terminate it." See: https://www.nature.com/articles/d41586-024-00716-2. NSF also is empowered to expand its review to other NSF-funded projects at the University to ensure appropriate use of federal funds.

105. Further, Dr. Dias is our colleague. His reputation affects the University's reputation. In the *Nature* 2020 Article and those publications that followed, Dr. Dias claimed to

have made significant advances in scientific knowledge. This was a tremendous accolade for the University. As the articles were retracted one-by-one, and now with the Final Investigation Report's findings of research misconduct and the University's acceptance of those findings, the University's reputation has been tarnished along with Dr. Dias'.

106. My entire career has been dedicated to the pursuit of knowledge and to contributing to the advancement of academic understanding. I can confidently say that this sentiment is shared by the vast majority of my colleagues at the University of Rochester. To know that one of our own has misled the scientific community is a disappointment and an embarrassment.

107. I, and others, would have been relieved if Dr. Dias and his research had been vindicated in the Investigation process. However, my highest responsibility as the University's Vice President for Research and Research Integrity Officer is to the integrity of the scientific research process. I was present for every interview the Investigation Committee conducted. I was provided with every item of data, or the lack thereof, that Dr. Dias produced in his attempt to support the scientific conclusions he published. Although I did not have a vote or otherwise participate in the Investigation Committee's deliberations, I concur in their findings. Most unfortunately, the evidence supports that Dr. Dias committed research misconduct.

I AFFIRM this 28 day of March, 2024, under the penalties of perjury under the laws of New York, which may include fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Stephen Dewhurst, Ph.D.

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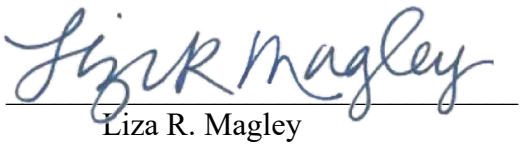
22 N.Y.C.R.R. 202.8-b Certification

I certify this 28th day of March, 2024, that the foregoing affirmation was prepared on a computer, using "Times New Roman" typeface, in 12-point size, with double-line spacing, and that the total number of words in the affirmation, exclusive of the caption and signature block, as calculated by the word processing used to prepare the affirmation, is 6,999.



Liza R. Magley